

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DERICK MACHUN AMOS

PLAINTIFF

V.

CIVIL ACTION NO. 3:21-CV-55-DPJ-FKB

SHERIFF JODY PENNINGTON; ET AL.

DEFENDANT

ORDER

This matter is before the Court on the unopposed Report and Recommendation [58] of United States Magistrate Judge F. Keith Ball. Plaintiff Derick Machun Amos brought this § 1983 action in January 2021, claiming to have been detained for a prolonged period without trial. Compl. [1] at 6–7; *see also* Order [15] at 2. On March 11, 2022, United States Magistrate Judge F. Keith Ball scheduled a *Spears* omnibus hearing for May 25, 2022. Order [51] at 1. Amos did not appear, so Judge Ball now recommends that this case be dismissed for failure to prosecute. R&R [58] at 1.

“Federal courts have inherent powers[,] which include the authority to sanction a party or attorney when necessary to achieve the orderly and expeditious disposition of their dockets.” *Budri v. Amin. Review Bd., U.S. Dep’t of Labor*, 858 F. App’x 117, 127 (5th Cir. 2021) (per curiam) (quoting *In re Carroll*, 850 F.3d 811, 815 (5th Cir. 2017)). A dismissal with prejudice for failure to prosecute is proper only when “[1] the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or [(2)] the record shows that the district court employed lesser sanctions that proved to be futile.” *Campbell v. Wilkinson*, 988 F.3d 798, 802 (5th Cir. 2021) (quoting *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992)). “[A]dvance warnings of possible default mitigate the requirement that the district court consider lesser sanctions.” *Atl. Sounding Co. v. Fendlason*, 555 F. App’x 378, 380 (5th Cir. 2014) (per

curiam) (citing *Imperial ED Promotions, L.L.C. v. Pacquiao*, 549 F. App'x 295, 299 (5th Cir. 2013) (per curiam)).

The Court last heard from Amos in December 2021. Since then, various Defendants have filed dispositive motions; Amos's responses have not been submitted and are delinquent. *See* Mots. for J. on the Pleadings [46, 53] (both filed in March 2022); Mot. for Summary J. [56] (filed May 11, 2022). Considering Amos's persistent silence, his absence from the *Spears* hearing, and his failure to object to Judge Ball's Report and Recommendation, dismissal for failure to prosecute is appropriate.

The Court adopts the R&R in full. A final judgment will be entered pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 14th day of June, 2022.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE